



**Request for a preliminary ruling from the Kammergericht (Germany) lodged on 20 August 2024 –
Eisenberger Gerüstbau GmbH v JK**

(Case C-564/24, Eisenberger Gerüstbau)

(C/2024/6916)

Language of the case: German

Referring court

Kammergericht

Parties to the main proceedings

Applicant: Eisenberger Gerüstbau GmbH

Defendant: JK

Questions referred

1. Is a contract a distance contract within the meaning of Article 2(7) of Directive 2011/83/EU⁽¹⁾ for which a right of withdrawal exists under Article 9(1) of that directive if, before or at the time of conclusion of the contract, the consumer is assisted by a trader whom he or she has commissioned independently of the service provider?
2. If the Court answers Question 1 in the affirmative:

Is a contract likewise a distance contract within the meaning of Article 2(7) of Directive 2011/83/EU for which a right of withdrawal exists under Article 9(1) of that directive where one of the following additional conditions is fulfilled?

- (a) It was the trader assisting the consumer who took the initiative to establish the contact between the consumer and the service provider.
 - (b) Prior to the conclusion of the contract, the trader assisting the consumer influenced key parts of its content, for example by drawing up specifications or providing a draft contract.
3. If the Court were to consider that, in the cases referred to in Questions 1, 2(a) or 2(b) above, the contract were not a distance contract for which a right of withdrawal existed:

If, after the conclusion of that contract, the parties, again with the exclusive use of means of distance communication, conclude another agreement, the object of which is the provision of additional services by the service provider which are of lesser importance than those covered by the first contract:

Is that additional agreement in itself a distance contract within the meaning of Article 2(7) of Directive 2011/83/EU for which a right of withdrawal exists under Article 9(1) of that directive, or is it, like the main contract which it supplements, not subject to a right of withdrawal as a distance contract?

4. If the consumer has exercised his or her right of withdrawal under a distance contract for which such a right exists after the other party to the contract has already provided services:

⁽¹⁾ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

Notwithstanding Article 14(4)(a) and (5) of Directive 2011/83/E[U], can the consumer be required to pay the trader adequately for the services he or she has provided if any other outcome would, in the light of all the circumstances of the case, be abusive or constitute a breach of good faith?
